

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Absorbent Technologies, Inc.,

Debtor.

Case No. 13-31286-tmb7

**STIPULATED ORDER APPROVING
AND IMPLEMENTING THE
TRUSTEE'S PROPOSED SETTLEMENT
WITH THE QUEEN AVE. LANDLORD**

The undersigned parties stipulate to the following findings and order:

A. This matter originally came before this Court on the Notice of Intent to Sell Real or Personal Property, Compensate Real Estate Broker, and/or Pay any Secured Creditor's Fees and Costs; Motion for Authority to Sell Property Free and Clear of Liens; and Notice of Hearing (Doc. 275) (the "**Sale Motion**") filed by Kenneth S. Eiler, Chapter 7 Trustee (the "**Trustee**") and the Trustee's Notice of Intent To Sell Property at Public Auction and Compensate Auctioneer; and Application to Employ Auctioneer (Doc. 280) (the "**Auction Motion**") regarding the necessary environmental remediation of the Debtor's facilities and the proposed sale of the Debtor's tangible personal property, including but not limited to machinery, fixtures, equipment, vehicles and accessories, office equipment, and furnishings located at 140

Queen Ave. SW, Albany, OR (the “**Queen Ave. Personal Property**”) and 2830 Ferry St. SW, Albany, OR (the “**Ferry St. Personal Property**”).¹

B. Both the Trustee and together David Ellis, Pamela Ellis and Farouk Al-Hadi (collectively the “**Queen Ave. Landlord**”) filed memoranda in support of the Sale Motion (collectively “**Supporting Parties**” and “**Supporting Memoranda**” respectively). Lombard Foods, Inc. (the “**Ferry St. Landlord**”), Trinity Capital Investment, LLC (“**Trinity**”), Vencore Solutions LLC (“**Vencore**”), Water Conservation Technologies, Inc. (“**WCT**”), Linn County, Oregon, and Toyota Motor Credit Corporation (“**Toyota**”) filed objections and memoranda in opposition to the Sale Motion (collectively the “**Objecting Parties**” and “**Objections**” respectively).

C. As described in the Court’s Findings of Fact and Conclusion of Law stated on the record on November 26, 2013, the Court determined after the day-long evidentiary hearing that the Trustee had not demonstrated ownership of the personal property to be sold and surcharged, and that the Trustee required consent of the parties claiming interest in the property to proceed with a sale. In regards to the Ferry St. Personal Property, a stipulated order was entered allowing the sale of Ferry St. Personal Property free and clear of liens and interests. *See* Order (Doc. 339).

D. In regards to the Queen Ave. Personal Property, the Trustee previously abandoned the Estate’s interests in the Queen Ave. Personal Property. *See* Doc. 323 (filed December 5, 2013; excluding (1) any interests in intellectual property and (2) any interests in avoidance or other potential claims against WCT).

E. In order to help facilitate the disposition of the Queen Ave. Personal Property, the Court entered on January 29, 2014, a Stipulated Order Resolving Interests of WCT and Vencore (Doc. 375) (the “**WCT / Vencore Order**”), which conveyed and transferred to the

¹ The Sale Motion and this Order specifically exclude from “Property” the Debtor’s intangible property, such as intellectual property rights that have been sold. *See, e.g.*, IP Sale Order (Doc. 368).

Debtor's bankruptcy estate (the "**Estate**") any and all rights, title, and interests of WCT and Vencore in the Queen Ave. Personal Property.

F. After the WCT / Vencore Order was entered, the Trustee then arranged a settlement with the Queen Ave. Landlord to release to the Queen Ave. Landlord any and all rights, title, and interests of the Estate in the Queen Ave. Personal Property, including, without limitation, any and all rights, title, and interests of WCT and Vencore held by the Estate by virtue of the WCT / Vencore Order, in exchange for the Queen Ave. Landlord releasing any and all claims against the Trustee and the Estate (the "**Queen Ave. Property Settlement**").

G. To seek approval of the Queen Ave. Property Settlement, a Motion and Notice of Intent to Settle and Compromise and Order Thereon (Doc. 378) (the "**Settlement Notice**") was entered on February 5, 2014, and no objections were received by the time set by the Court, plus three days for mailing (*i.e.*, by March 3, 2014).

H. The Settlement Notice described both the Queen Ave. Property Settlement as well as a contemporaneous global settlement of the claims of the U.S. Environmental Protection Agency ("**EPA**"). The global EPA claims settlement involves the Estate, the Queen Ave. Landlord, the Ferry St. Landlord, and the EPA and provides a release of the EPA's claims in exchange for payments from the parties, including a \$115,000 contribution from the Estate to resolve alleged liability of the Ferry St. Landlord and of the Estate (the "**EPA Claims Settlement**"). The EPA Claims Settlement, while signed by all parties, still remains subject to the EPA's 30-day public comment period, which for various reasons has not yet begun.

I. Although the Settlement Notice described both the Queen Ave. Property Settlement and the EPA Claims Settlement together, the undersigned and consenting parties agree that (a) no objections have been received in response to the Settlement Notice; (b) the immediate implementation of the Queen Ave. Property Settlement is in the best interests of all parties, including the Estate; (c) there is no reason to delay implementation of the Queen Ave. Property Settlement; (d) the EPA Claims Settlement, while now approved by this Court based on

no objections being filed to the Settlement Notice, shall remain pending until the EPA's public comment period concludes; and (e) the Trustee's obligation to pay \$115,000 to the EPA does not arise until the EPA settlement process is complete and the EPA's and other parties' mutual global releases become effective. Based on the Court's review and consideration of these facts, and having received no objections in response to the Settlement Notice, NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Queen Ave. Property Settlement portion of the Settlement Notice shall be deemed effective immediately, prior to public comment and consummation of the EPA Claims Settlement.

2. Therefore, without any representation, warranty, or admission of any rights or interests, the Estate hereby releases and conveys any and all rights, title, and interests it may have or claim in the Queen Ave. Personal Property, including, without limitation, any and all rights, title, and interests of WCT and Vencore now held by the Estate, to the Queen Ave. Landlord. To the extent that the automatic stay would be implicated by enforcement of the lien rights and/or security interests now held by the Queen Ave. Landlord with regard to the Queen Ave. Personal Property, the Queen Ave. Landlord is granted relief from the automatic stay, if necessary, to foreclose any and all liens and security interests that it holds on the Queen Ave. Personal Property as a result of the conveyance described herein or otherwise.

3. In exchange, the Queen Ave. Landlord (including any assigns) hereby confirms the release of any and all claims against the Trustee and the Estate, including but not limited to damages arising under its now-terminated lease and for the environmental remediation activities that have been conducted and are continuing on or in connection with its real property or the Queen Ave. Personal Property. This release, however, extends only to the Trustee and the Estate, and not to any other person or entity, including, without limitation, WCT and Vencore. In addition, subject to payment of the \$115,000 by the Estate under the EPA Claims Settlement, and provided that the EPA Claims Settlement becomes effective based on the currently

contemplated total settlement figure of \$250,000 on account of claims of the EPA arising through the date of the EPA Claims Settlement, the Queen Ave. Landlord and the Ferry St. Landlord (including their respective agents and assigns) mutually release one another from any and all claims, including any claims arising after the EPA Claims Settlement.

4. To the extent that Bankruptcy Rule 6004(h) is applicable and in light of (1) the need for the immediate resolution of the Queen Ave. Property Settlement and (2) the stipulations of all parties in interest, this Order shall be effective immediately and shall not be subject to a 14-day stay as provided in Bankruptcy Rule 6004(h).

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SO STIPULATED:

PERKINS COIE LLP

McKITTRICK LEONARD LLP

By: /s/ Douglas Pahl
Douglas Pahl, OSB No. 950476
Counsel for David Ellis, Pamela Ellis and
Farouk Al-Hadi

By: /s/ Justin D. Leonard
Justin D. Leonard, OSB No. 033736
Counsel for Trustee Kenneth S. Eiler

SHAWN RYAN, ATTORNEY

By: /s/ Shawn P. Ryan
Shawn P. Ryan, OSB No. 901137
Counsel for Lombard Foods, Inc.

LBR 9021-1(a)(2) Circulation Certification: I have not received any objections in response to the Settlement Notice. Pursuant to LBR 9021-(a)(2)(A), based on the stipulations above and written consent by counsel for the EPA, this order has been lodged without further circulation.

Presented by:

McKITTRICK LEONARD LLP

By: /s/ Justin D. Leonard
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Counsel for Trustee Kenneth S. Eiler

cc: CM/ECF Recipients and the Attached List of Interested Parties by US Mail

List of Parties to Receive Copy of Order

In re Absorbent Technologies, Inc.

U.S. Bankruptcy Court, District of Oregon, Case No. 13-31286-tmb7

To all ECF-registered parties, and to the following parties by US Mail:

Interested Parties Requesting Notice

David M. Fournier
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MATTHEW S BETHARDS on
behalf of Trustee Kenneth S Eiler
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Salt Lake City, UT 84111-4904